UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1997/987
17 December 1997

ORIGINAL: ENGLISH

LETTER DATED 17 DECEMBER 1997 FROM THE EXECUTIVE CHAIRMAN OF THE SPECIAL COMMISSION ESTABLISHED BY THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 9 (b) (i) OF SECURITY COUNCIL RESOLUTION 687 (1991) ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In accordance with the wishes of the Council, I visited Baghdad from 12 to 16 December 1997. I was accompanied by my Deputy, Mr. Charles Duelfer, and three Commissioners, Mr. Gennady Gatilov (Russian Federation), Mr. Michel Saint-Mleux (France) and Mr. Paul Schulte (United Kingdom of Great Britain and Northern Ireland) as well as senior officers of the permanent staff of the Commission, New York.

The Iraqi side was led by the Deputy Prime Minister, Mr. Tariq Aziz. He was supported by Ministers and senior military and civilian officials responsible for Iraq's proscribed weapons programmes.

Three plenary meetings were held, one on 14 December and two on 15 December. In addition, there were two technical-level meetings held between the Commission's experts and their Iraqi counterparts.

This visit took place with the full support of the members of the Security Council, as expressed by the President following informal consultations on 8 December 1997, and within the mandate set out in the statement by the President of the Council of 3 December 1997 (S/PRST/1997/54). In that statement, the Council, inter alia, stressed that the effectiveness and speed with which UNSCOM may accomplish its responsibilities is, above all, determined by the degree to which the Government of Iraq cooperates in disclosing the full extent and disposition of its proscribed programmes and in granting UNSCOM unimpeded access to all sites, documents, records and individuals relevant to its work.

In accordance with the wishes of the Council, I sought assurances from the Government of Iraq that it would grant the Commission immediate, unconditional and unrestricted access to all sites the Commission wished to inspect and, to obtain greater clarity on Iraq's understanding of its obligations in this regard. I also sought to arrive at an agreement on an accelerated programme of work on outstanding issues in the various proscribed weapons areas within the

mandate of the Commission. Another goal was to arrive, with the help of the Commission's visiting and resident monitoring teams, at an evaluation of the situation concerning the removal, return and possible proscribed use of dual-use equipment under monitoring by the Commission during the period in which Iraq prevented the Commission's teams from carrying out their tasks.

A report on the outcome of this visit to Baghdad is attached. I should be most grateful if you could bring this letter and the attached report to the attention of the members of the Security Council.

(Signed) Richard BUTLER

Annex

Report on the visit to Baghdad from 12 to 16 December 1997 by the Executive Chairman of the Special Commission established by the Secretary-General under paragraph 9 (b) (i) of Security Council resolution 687 (1991)

I. INTRODUCTION

1. The discussions were divided, initially, into two parts: policy and technical.

2. The policy discussions focused on access by UNSCOM to sites, documents and persons relevant to Iraq's programmes on weapons of mass destruction and related issues in the fields of disarmament and ongoing monitoring and verification.

3. The technical discussions were focused on the subjects nominated by the Executive Chairman in his letter of 29 October 1997 to the Deputy Prime Minister, namely, missile warheads, the chemical agent VX, munitions filled with mustard and the overall area of biological weapons.

II. POLICY DISCUSSIONS

4. The Executive Chairman opened these discussions by recalling relevant resolutions of the Security Council and the report of the emergency meeting of the Special Commission held on 21 November 1997 (see S/1997/922).

5. The Executive Chairman emphasized that he had been sent to Baghdad as the representative of the Council and stressed the very great importance the Security Council placed upon compliance by Iraq with the requirement, laid down by the Council, that the Special Commission should have unconditional access to all relevant sites, documents and persons in Iraq.

6. The Executive Chairman then made two main points based on the experience of the Commission, particularly during the period from June 1996 to the present:

(a) The implementation of the modalities for inspection of sensitive sites had not worked. The Commission had not been able to carry out its work satisfactorily;

(b) Some sites had been put, by Iraq, beyond the scope of those modalities. This development had not been contemplated. It had prevented the Commission from carrying out its work, in all respects, at those sites.

7. With respect to the modalities for inspection of sensitive sites, the Executive Chairman said they needed to be reviewed. Such a review was provided for in the modalities document.

8. With respect to the issue of some sites being declared by Iraq beyond or outside any modalities for inspection, the Executive Chairman said this was a

very serious matter, which needed to be addressed. In this context, he referred to the decision of the Security Council to the effect that Iraq had to allow unconditional access to any site the Commission wished to inspect. He also referred to the acknowledgement by both the emergency session of the Special Commission and the Security Council that the Commission respects the legitimate national security, sovereignty and dignity concerns of Iraq.

9. In reply, the Deputy Prime Minister gave a detailed account of what he saw as the history of the relations between Iraq and UNSCOM. He then said there were, from his Government's point of view, five categories of sites within Iraq:

(a) Normal sites. These included factories, sites belonging to the Military Industrialization Corporation, sites at which prohibited activities had or may have taken place, military warehouses and military camps;

(b) National security sites. These were sites of significance in terms of the security of the State. They included sites of the Republican Guard and the Special Republican Guard, sites of the military and civilian intelligence agencies and security apparatus sites;

(c) Presidential and sovereign sites. These were not clearly defined, except that it was stated that they were areas associated with the Presidency and were well known. They would include sites, offices and resorts at which the Head of State resides and/or works;

(d) Civilian sites and/or private residences;

(e) Foreign sites in Iraq. These included foreign companies, diplomatic offices and residences.

10. In the subsequent discussions, the following clarifications were given by the Iraqi side with respect to access and inspections.

11. Normal sites could be visited and inspected without restriction.

12. Sites of national security significance were those to which the modalities for the inspection of sensitive sites would apply, except for the most secret rooms therein, to which no access would be granted.

13. Presidential and sovereign sites included headquarters but not branches of ministries. All had gates and high walls, but no further clarification was offered. They would not be allowed to be inspected or overflown under any circumstances.

14. Civilian sites could only be inspected if the property owners granted permission. Iraq would be reluctant to ask for that permission because, it stated, it had no legal authority to request such permission.

15. Foreign sites comprised properties or companies owned by foreign entities in Iraq, including Arab international organizations. UNSCOM would have to deal directly with such entities. Iraq wanted no involvement in such matters.

16. On the question of the third of these categories, presidential and sovereign sites, the Executive Chairman noted that the exclusion of such a category from UNSCOM inspections was in contradiction of the decisions of the Security Council. He said he doubted that Iraq's insistence on such sites being excluded from access or inspection by UNSCOM would be acceptable to the Council.

17. The Executive Chairman asked whether Iraq might be prepared to accept special arrangements for inspection of presidential and sovereign sites. These special arrangements could be discussed with the Iraqi side, in order to take into account Iraq's legitimate security, sovereignty and dignity concerns. The Deputy Prime Minister said such an approach could not be accepted. No special arrangements could cover the concerns of the Government of Iraq with respect to this category of site.

18. Given this response, the Executive Chairman asked whether Iraq might be prepared to provide a list or map of such sites to UNSCOM and the Security Council, so that the order of magnitude of this proposed exclusion could be seen. The Deputy Prime Minister said this could not be done because such a map would assist the bombing of those sites by the United States of America. He said if the Executive Chairman could obtain a written guarantee from the President of the Security Council that such bombing would never take place, then a list or map could be provided. He said that the sites were well known to everybody, including local diplomats.

19. The Deputy Prime Minister said he was aware that Iraq's exclusion of the presidential and sovereign sites from UNSCOM inspections might not be acceptable to the Council, but Iraq's position was absolute. The Executive Chairman twice sought affirmation of this position. It was given. In reply to a further question from the Executive Chairman, the Deputy Prime Minister said Iraq's position was justified by and in accordance with the statement of 3 December 1997 by the President of the Security Council, having regard to the reference therein to the respect for the national security, sovereignty and dignity of Iraq.

20. With respect to the second category, sites of significance for national security, the Executive Chairman said there would need to be a significant improvement in the modalities for the inspection of any site Iraq decided to declare as sensitive. He mentioned, in particular, the size of the teams which could enter such sites, delays in obtaining entry, the need for activity in such sites to be frozen immediately upon the sites being declared as sensitive and, the need to ensure the Commission's right to photographic surveillance of the site declared for inspection. The Deputy Prime Minister agreed to an improvement of the arrangements for the inspection of national security sites.

21. Consequently, the Deputy Prime Minister accepted, for the inspection of national security sites, the following:

(a) UNSCOM would increase the size of entry teams beyond the current limit of four persons. The final number of inspectors to enter the sites would be decided, in a case-by-case approach, by the Chief Inspector and the senior Iraqi representative. The size of the team would be proportionate to the size and complexity of the site;

(b) Iraq would take steps to significantly reduce the delay in entry to such sites and the delays which UNSCOM teams often faced at checkpoints on roads to inspection sites;

(c) Immediately upon a site being declared sensitive, the Chief Inspector and the accompanying Iraqi representative ("minder") could enter the site to ensure that movement within it was frozen and, for example, that documents were not burnt or destroyed.

22. The Executive Chairman said these arrangements should be tested straight away and then reviewed in a month or so. In the meantime he would report them to, and seek the advice of, the Security Council. The Deputy Prime Minister agreed to this approach.

23. With respect to civilian sites and private residences, the Executive Chairman expressed reservations about Iraq's claim that it, basically, lacked domestic authority over such sites.

24. The Deputy Prime Minister also made proposals with respect to the conduct by UNSCOM of its helicopter flights. The Executive Chairman agreed to study Iraq's proposals.

25. The Iraqi side also raised the question of whether or not the Commission's U-2 reconnaissance flights might be replaced by Iraqi assets or those of other States. The Deputy Prime Minister said this proposal was made because of Iraq's perception of hostility by the United States towards Iraq. He said such proposals had been made to the previous Executive Chairman and were documented. Those documents were given to the Executive Chairman.

26. In the context of aviation, the Executive Chairman called the attention of the Deputy Prime Minister to those parts of the report of the emergency session of the Special Commission in which reference was made to UNSCOM flying rights, including the use of the airfields at Rasheed (Baghdad) and Basra. The Deputy Prime Minister said he would discuss this issue further during the Executive Chairman's next visit to Baghdad.

27. It was agreed that the Executive Chairman would visit Baghdad again in the week beginning 19 January 1998, at which time, inter alia, the experience of the implementation of the new arrangements for the inspection of National Security sites would be reviewed.

28. The Executive Chairman undertook to report all of this discussion to the Security Council faithfully, emphasizing again that aspects of the Iraqi position, especially those relating to the exclusion of UNSCOM from access to presidential and sovereign sites, might not prove acceptable to the Council. The Deputy Prime Minister agreed to this approach.

III. TECHNICAL DISCUSSIONS

29. In a preparatory discussion, the Executive Chairman and the Deputy Prime Minister agreed that the technical discussions should be focused on the subjects

nominated by the Executive Chairman in his letter of 27 October 1997, subjects in the fields of missile warheads and chemical and biological weapons.

30. At the first technical meeting, only the field of missiles was addressed. The Deputy Prime Minister then called a plenary meeting in order to introduce Iraq's position in all three proscribed weapons areas.

31. At that meeting, representatives of Iraq read four statements, the common element of which was the claim that Iraq had destroyed and/or no longer had any weapons of mass destruction and, where there was disagreement between the Commission and Iraq on these issues of substance, those disagreements should be settled in technical "seminars" with the participation of both international and Iraqi experts. The Commission could continue its normal work, with which Iraq would cooperate fully, and Iraq would, in due course, answer any questions put to it by the Commission, but Iraq would not itself volunteer any new information. It preferred a situation where it would verify the information held by the Commission.

32. The Deputy Prime Minister reiterated that Iraq had already divested itself of all of its weapons of mass destruction. In particular, he stated "for the public record", that the Government of Iraq had made the decision in 1991 to deny and obliterate traces of its biological weapons programme, a decision which the Deputy Prime Minister said was justified on grounds of national security and survival. He also said that "the Government of Iraq possessed not one gram of biological agents, not one gram of biological weapons, in Iraqi Government hands in the territory of Iraq". He said that these were the facts today.

33. In the discussion which followed, the Iraqi side declined the Commission's invitation to develop together an additional joint programme of work in all weapons areas for the months of January and February 1998. It had no objection to action by the Commission towards the objectives outlined and it would answer the Commission's questions, but it would not itself take part in the articulation of a specific programme of intensive work.

34. Iraq's main proposal was to convene technical "seminars" involving international experts to adjudicate Iraq's position on its proscribed weapons programmes, solely on the basis of extant information.

35. Facing the reiteration that Iraq would itself volunteer no further information in any weapons category, the Executive Chairman then turned to Iraq's proposal on "seminars".

36. The Executive Chairman made clear that no arrangement that called into question the responsibility of UNSCOM to the Security Council, its professionalism or objectivity would be acceptable.

37. The Deputy Prime Minister accepted that position.

38. The Executive Chairman then stated that, as part of the verification of specific issues, the Commission would be prepared to conduct technical evaluation meetings with the Iraqi side, on the following basis:

(a) The Executive Chairman would invite qualified and objective international experts to take part and participate in the Commission's team. They would be chosen from the countries having the necessary expertise;

(b) The Commission would prepare a dossier for the team containing all the relevant information. The dossier would be made available to the Iraqi side to enable it to respond to relevant questions at the technical evaluation meeting;

(c) The discussions at the meetings would be conducted in an open and continuous manner in order to enable joint evaluation of technical issues;

(d) The Commission's team would advise the Executive Chairman on its findings as a result of the meetings. The Executive Chairman would then incorporate these findings in appropriate reports to the Security Council and the Government of Iraq.

39. The Deputy Prime Minister agreed to these proposals. He commented that, from his perspective, the international experts would form part of a single UNSCOM side, so that the technical evaluation meeting would be two- and not three-sided. In the event of divided views, it would be for the Executive Chairman to decide what went into his report, perhaps by first putting it to the UNSCOM Commissioners for consideration or advice.

40. It was then agreed that technical evaluation meetings would be scheduled for January 1998 in the areas of missile warheads and the chemical agent VX, with a technical evaluation meeting in the biological weapons area to follow, as soon as practicable.

IV. MOVEMENT AND POSSIBLE USE OF DUAL-USE EQUIPMENT

41. At the third plenary meeting, the Executive Chairman read the following statement with respect to the Commission's preliminary findings on the removal of dual-use equipment under monitoring by the Commission:

> "It is an important task for the Commission to investigate unauthorized removal of equipment and materials under monitoring to ensure that equipment has not been misused for proscribed purposes. The dual-use items and facilities have been placed under monitoring specifically because they have inherent capabilities to be used for proscribed activities. Thus, it follows from this that unauthorized removal of such items has a serious negative impact on effective monitoring.
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> "The Commission took note of Iraq's statement that all removed equipment had been returned to its original locations. Through inspections that have been accomplished so far, the Commission can confirm that this is indeed the case at the facilities that have been visited. The Commission has found no evidence of proscribed activities at the facilities that have been visited or at the declared evacuation sites. No evidence has been found to date of any misuse of dual-use items, except for one possible case within a chemical facility. This case is currently under investigation.

"The Commission's task and verification work would have been much facilitated if Iraq had provided all information and data on the removal of equipment, as requested in the Commission's letter of 26 November to Iraq. The Commission will continue its efforts to determine if any misuse of equipment and materials under monitoring has occurred."

42. The Deputy Prime Minister was satisfied with this statement. The Iraqi side presented a preliminary explanation of the case within the chemical facility reported by the Commission. The Executive Chairman requested that the Government of Iraq present a full, written clarification of the case, so that the Commission could make a final determination.